



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ROBERT D. BURCH)

Appearances:

For Appellant: Robert D. Burch, in pro. per.

For Respondent: Peter S. Pierson, Tax Counsel

O P I N I O N

This appeal by Robert D. Burch is from the action of the Franchise Tax Board in seeking to hold him liable for proposed assessments of additional personal income tax assessed against Meredith L. Burch in the amounts of \$175.07 and \$473.49 for the years 1960 and 1961, respectively.

Respondent has requested that the appeal be dismissed, contending that this board does not have jurisdiction to hear the matter. Since both parties have requested an opportunity to file additional arguments on the merits if it is determined that this board does have jurisdiction, this decision will be limited to the jurisdictional question.

Appellant and Meredith L. Burch were separated on May 11, 1960. Subsequently a divorce action was initiated and an interlocutory decree was entered on January 12, 1961. The final decree of divorce was issued in 1962.

-Appellant and Meredith L. Burch filed separate California personal income tax returns for the years 1960 and 1961. In his returns appellant excluded amounts which he contended represented Meredith L. Burch's community share of appellant's income from the time of their separation to the date the interlocutory decree was entered. Meredith L. Burch never received any of the amounts excluded by appellant

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from his reported gross income, and she reported only her own earnings and certain unrelated cash payments which she had received from appellant.

As a result of appellant's attribution of a portion of his earnings to his former wife, respondent issued notices of proposed additional assessment against Meredith L. Burch. She protested those assessments, an oral hearing was held, and on March 8, 1966, the assessments were affirmed. Meredith L. Burch did not file an appeal to this board from respondent's action on her protests.

In a letter dated March 29, 1966, respondent notified appellant that he was being held liable for payment of the assessments against his former wife, under the provisions of section 18555 of the Revenue and Taxation Code'. That section provides:

The spouse who controls the disposition of or who receives or spends community income as well as the spouse who is taxable on such income is liable for the payment of the taxes imposed by this part on such income. Where a joint return is filed by a husband and wife the liability for the tax on the aggregate income is joint and several.

Respondent's letter stated that action against appellant would be taken, without further notice to him, if payment was not received immediately.

Appellant did not pay the assessments. On April 7, 1966, he filed an appeal with this board from respondent's notice of his liability for the assessments against his former wife.

Respondent contends that this board lacks jurisdiction to hear this appeal since the notices of proposed assessment resulting in appellant's liability were issued against Meredith L. Burch and not against appellant. Respondent argues that in the absence of an appeal timely filed by the taxpayer against whom the assessment is made, the action of the Franchise Tax Board upon his protest becomes final. Since the proposed assessments in the instant case were not against appellant, respondent urges that the only way appellant can obtain standing to file an appeal with this board is for him to pay the assessments for which he is being held liable and then to file a claim for refund.

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With regard to the jurisdictional question, appellant submits that both past practice and common sense establish that this board has jurisdiction to prevent the collection of an illegal tax. In the alternative appellant contends that he cannot be held liable for a deficiency asserted against his former wife unless respondent follows the regular assessment procedure by issuing a notice of proposed assessment against him and allowing him a hearing on his protest against that assessment.

The State Board of Equalization's jurisdiction over personal income tax matters is acquired from statutory provisions contained in the Revenue and Taxation Code. Section 18593 of that code permits a taxpayer to appeal in writing to this board from respondent's action on the taxpayer's protest against a proposed additional assessment. The appeal must be filed within 30 days of the date on which respondent mails notice of its action to the taxpayer. Section 18595 authorizes this board to hear and determine such an appeal.

The appeal in the instant case was filed by appellant within 30 days of the mailing of respondent's notices of action on Meredith L. Burch's protests. It was thus filed within the statutory period set forth in section 18593. **A determination of whether this board has jurisdiction therefore depends on whether appellant was a taxpayer authorized to file the appeal.**

The term "taxpayer" is defined in section 17004 of the Revenue and Taxation Code to include "any individual ... subject to the tax imposed by this part," i.e., the Personal Income Tax Law. Respondent asserts that under section 18555 appellant is liable for the assessments of personal income tax against his former wife, By proceeding against appellant under that section, and by demanding immediate payment, respondent has of necessity characterized appellant as a "taxpayer," within the meaning of sections 17004 and 18593 of the Revenue and Taxation Code, even though the proposed additional assessments were not issued against him. Since appellant is being held liable for the tax assessed against Meredith L. Burch, we believe he was entitled to file an appeal with this board. We therefore conclude that this board has jurisdiction to hear the appeal and we will hereafter consider arguments on the merits of the matter.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that respondent's request for the dismissal of the appeal of Robert D. Burch from the action of the Franchise Tax Board in seeking to hold him liable for proposed assessments of additional personal income tax assessed against Meredith L. Burch in the amounts of \$175.07 and \$473.49 for the years 1960 and 1961, respectively, be and the same is hereby denied.

Done at Sacramento, California, this 8th day of January, 1968, by the State Board of Equalization.

Richard W. ..., Chairman
Paul ..., Member
John W. ..., Member
..., Member
..., Member

ATTEST: *[Signature]*, Secretary